IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

MACA.No. 705 of 2003()

OPMV.760/1994 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, PATHANAMTHITTA
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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.,
KOLLAM, REPRESENTED BY ITS ASST.MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT/2ND RESPONDENT:
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1. GOPALAN ACHARY, S/O.GOVINDAN ACHARY,
SETTLEMENT COLONY, HOUSE NO.150,
PUNNUKKANNOOR, PERUMPUZHA.

2. BADARUDEEN KOYA, S/O. SULAIMAN KUNJU,
SHEREEF MANZIL, PERUMPUZHA P.O., KOLLAM.

BY ADV. SRI.S.SUNIL NARAYANAN FOR R1

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

M.A.C.A NO. 705 OF 2003

Dated this the 6th day of February, 2007

J U D G M E N T

The appellant M/s.Oriental Insurance Co.Ltd was the 3rd respondent in O.P.(MV) No.760/94 filed by the 1st respondent here in. The petitioner filed the above claim for compensation of the injuries sustained in a motor accident. He claimed an amount of Rs.50,000/- by way of compensation. The owner remained ex parte. On behalf of the insurance company, who is the appellant herein a written statement was filed wherein they inter alia contended that there is a valid insurance. But according to them gratuitous passengers are not covered by the policy issued and that the policy conditions have been violated. Therefore they disclaimed their liability. The Motor Accidents Claim Tribunal found that there was negligence on the part of the driver. The quantum of compensation was then fixed after taking into consideration all the relevant materials on record and found that the claimant will be entitled for a compensation of Rs.44,500/-. However, the contention of the Insurance Company disclaiming their liability to pay compensation to the gratuitous passenger

was rejected following the decision of the Apex Court in Satpal Singh's case. It was also observed that the policy as such was not produced.

2. Learned counsel Sri.George Cherian appearing on behalf of the Insurance company would contend that the decision in Satpal Singh's case has since been overruled by the apex court in the latter decision in Asha Rani's case reported in **New India Assurance Co. Ltd v. Asha Rani and others** (**2003(2) SCC 223).** In paragraph 30 of the judgment, the apex court held that the decision in New India Assurance Co. Ltd vs. Satpal Singh has not laid down the law correctly and should be overruled. Subsequently, in **National Insurance Co. Ltd v. Baljit Kaur and others (2004(2) SCC 1)**, apex court held that policy in respect of goods vehicle, the liability of the insurer does not cover gratuitous passengers carried in such vehicle. The amendment to Section 147 (1) (b) of M.V. Act 94, does not alter this position. However, in view of the fact that the decision in law was not clear until the said decision was rendered, the Insurance company was directed to deposit the amount with liberty to file execution proceedings straight away against the owner without filing a fresh

claim.

3. In the light of the above two decisions by the Apex court, it is only an act policy. There is no liability on the Insurer to pay compensation to a gratuitous passenger in a goods carriage vehicle or any other vehicle. In the light of the latter decision of the apex court, the award of the Tribunal is liable to be set aside.

4. In the facts and circumstances as noticed above, the award passed by the Motor Accidents Claim Tribunal in O.P(MV) No.760/94 of MACT, Pathanamthitta is set aside. However, the Insurance Company shall deposit the amount before the MACT, the awarded amount and they will also be given liberty to produce policy of insurance and once it is found that the policy covers only the statutory liability, then in the light of the decision as cited supra, there cannot be any liability fastened on the insurance company and in that event insurance company will be entitled to realise the amount from the owner. The Tribunal shall pass fresh orders after considering the insurance policy and mould the relief accordingly.

Appeal is allowed.

P.R.RAMAN, JUDGE

Rp